

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

John Jarrett and Tina Alvarez, husband and wife,)

Plaintiff,

v.

United States of America,

Defendant,

CV 05-78 TUC DCB

O R D E R

On January 27, 2006, the Honorable Charles R. Pyle, United States Magistrate Judge, filed a Report and Recommendation ("Recommendation") in this action. The Recommendation advised the Court to grant Defendant's Motion to Dismiss (document 7) in part and deny it in part. The Court follows the recommendation, dismissing Plaintiff Alvarez from this action for lack of subject matter jurisdiction and denying dismissal of paragraphs three and four of the Complaint.

The parties were sent copies of the Recommendation and instructed that, pursuant to 28 U.S.C. § 636(b), they had 10 days to file written objections to the Recommendation. *See also*, Federal Rule of Civil Procedure 72(b) (party objecting to the recommended disposition has ten (10) days to file specific, written objections). To date, no objections have been filed.

Pursuant to 28 U.S.C. § 636(b), this Court makes a *de novo* determination as to those portions of the Report and Recommendation to which there are objections. 28 U.S.C. § 636(b)(1)(C) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made.") To the extent that no objection has been made, arguments to the contrary have been waived. *McCall v. Andrus*, 628 F.2d 1185, 1187 (9th Cir. 1980) (failure to object to Magistrate's report

1 waives right to do so on appeal); *see also*, Advisory Committee Notes to Fed. R. Civ. P. 72
2 (citing *Campbell v. United States Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974) (when no timely
3 objection is filed, the court need only satisfy itself that there is no clear error on the face of the
4 record in order to accept the recommendation).

5 The Court considers the Recommendation to be thorough and well-reasoned; it is neither
6 clearly erroneous nor contrary to law. *United States v. Remsing*, 874 F.2d 614, 617-618 (9th
7 Cir. 1989). The Recommendation shall, therefore, be accepted pursuant to 28 U.S.C. §
8 636(b)(1). The Court adopts the recommendation of the Magistrate Judge. For the reasons
9 stated in the Recommendation, the Court grants the Motion to Dismiss as to Plaintiff Alvarez
10 and denies it as to paragraphs three and four of the Complaint.

11 **Accordingly,**

12 **IT IS ORDERED** that the Report and Recommendation (document 9) is adopted as the
13 opinion of the Court.

14 **IT IS FURTHER ORDERED** that the Motion to Dismiss (document 7) is GRANTED
15 IN PART AND DENIED IN PART. Plaintiff Alvarez is dismissed from this action for lack of
16 subject matter jurisdiction.

17 **IT IS FURTHER ORDERED** that this matter remains referred to the Magistrate Judge.

18 DATED this 7th day of March, 2006.

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David C. Bury
United States District Judge